

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-100183-20

Date:

May 14, 2020

Legend:

Taxpayer =

Company =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

Dear :

This ruling responds to a letter dated December 10, 2019, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 855(a) of the Internal Revenue Code (the "Code").

FACTS

Taxpayer is a State statutory trust and is a non-diversified, closed-end management investment company that has elected to be treated as a business development corporation under the Investment Company Act of 1940. Taxpayer has elected to be taxed as a regulated investment company ("RIC") under subchapter M of chapter 1 of the Code. Taxpayer has operated in a manner intended to qualify

Taxpayer as a RIC at all times since it commenced operations. Taxpayer uses the calendar year as its taxable year for U.S. federal income tax purposes.

Taxpayer's federal income tax return, Form-1120 RIC, *U.S. Income Tax Return for Regulated Investment Companies*, for the taxable year ended Date 1 was due on Date 2. Taxpayer timely filed Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns* to extend the due date of Taxpayer's return to Date 3. Taxpayer's income tax return was prepared and signed prior to Date 3, and Taxpayer intended to file the return on or before Date 3.

Company is a fund sponsor and administers the tax and financial reporting for a group of RICs that includes Taxpayer. For the taxable year ended Date 1, Company had paper tax filings that were to be filed and mailed on Date 3 for a RICs and over b other paper tax filings for other entities and jurisdictions. On Date 3, Company had to mail over c tax returns. Because of the large volume of administrative work and paper tax filings, Company did not bring Taxpayer's Form 1120-RIC to the U.S. Post Office for mailing on Date 3. On Date 4, Company reviewed the tax returns that were filed on Date 3 and discovered that Taxpayer's Form 1120-RIC was not filed as intended. Company mailed Taxpayer's Form 1120-RIC on Date 4.

On its Form 1120-RIC, Taxpayer made an election under section 855(a) with the intention to treat dividends timely declared and timely distributed in accordance with the limitations set forth in section 855(a)(1) and (2), respectively, as having been paid during its taxable year ended Date 1. Taxpayer timely declared the appropriate dividends before the extended tax return filing date and distributed such dividends within twelve months after Date 1 and in each case not later than the date of the first regular dividend payment of the same type of dividend made after such declaration.

Taxpayer makes the following additional representations:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service ("Service").
2. Granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the election apply than it would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 at the time it requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.

5. Taxpayer is not using hindsight in requesting relief. No specific facts have changed since the due date for making the election that make the election more advantageous to Taxpayer.

6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, an affidavit on behalf of Company has been provided as required by sections 301.9100-3(e)(2) and (3).

LAW AND ANALYSIS

Section 855(a) provides that, if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the RIC elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in section 855(b) and (c).

Section 1.855-1(b)(1) provides that a section 855(a) election must be made in the return filed by the RIC for the taxable year. The election shall be made by the RIC by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the RIC as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides

the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make an election under section 855(a). Since Taxpayer filed its Form 1120-RIC on Date 4, Taxpayer's election to treat dividends declared and distributed in accordance with section 855, as described in this letter, for Taxpayer's taxable year ended Date 1, will be treated as having been timely made, despite having been made after the due date prescribed for making this election.

This ruling is limited to the timeliness of the filing of Taxpayer's election under section 855(a). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding any material item or representation on Taxpayer's Form 1120-RIC. Additionally, no opinion is expressed with regard to whether Taxpayer otherwise qualifies as a RIC under part I of subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer is not lower in the aggregate for all years to which the election apply than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the U.S. federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the U.S. federal income tax effect.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions and Products)

cc: